

REMARKS

Claims 1-31 are pending in the application.

Claims 1-31 have been rejected.

Claims 13, 24, and 31 have been amended.

Rejection of Claims under 35 U.S.C. §101

Claims 13-31 stand rejected under 35 U.S.C. §101 because the claimed invention is purportedly directed to non-statutory subject matter. Applicants respectfully traverse this rejection. While not conceding that the claims are non-statutory, but to expedite prosecution, Applicants have chosen to overcome rejection of independent claims 13 and 31 by amendment. Independent claims 13 and 31 have been amended to include the limitation, “A computer readable storage medium[.]” One of ordinary skill in the art would recognize a computer readable storage medium as not being software per se. Applicants respectfully submit that the claimed computer readable storage medium is statutory within the context of 35 U.S.C. §101, and that the rejection is therefore rendered moot. For at least these reasons, Applicants submit that claims 13 and 31, as amended, are in condition for allowance. Applicants therefore respectfully request the Examiner’s reconsideration and withdrawal of the rejections as to these claims and an indication of the allowability of same.

Regarding independent claim 23, the Office Action mailed August 9, 2007 states that “the claimed steps are not being performed by any form computer hardware component.” Applicants respectfully point out that Applicants’ specification provides examples of hardware implementations of claim 23. To illustrate, claim 23 discloses a primary node, and paragraph 0003 of Applicants’ specification provides that primary node includes primary host which, as an example, may be a server computer system. A server computer system is understood by those of ordinary skill in the art to be comprised of hardware. Therefore Applicants assert that claim 23 is directed toward statutory matter within the context of 35 U.S.C. §101. For at least these reasons, Applicants submit that claim 23 is in condition for allowance. Applicants therefore respectfully request the Examiner’s reconsideration and withdrawal of the rejection of claim 23 and an indication of the allowability of same.

Rejection of Claims under 35 U.S.C. §112

Claims 24 and 31 stand rejected under 35 U.S.C. §112, second paragraph, as being incomplete for purportedly omitting essential structural cooperative relationships of elements. Applicants respectfully traverse this rejection. While not conceding that the claims are non-statutory, Applicants have chosen to overcome this rejection by amendment. Claims 24 and 31 have been amended to include the limitation “processing **modified data to generate processed data** at a secondary node, wherein the secondary node comprises a replica of a first data.” Applicants respectfully submit that claims 24 and 31 as amended do not omit matter disclosed to be essential to the invention, and are enabling to allow one of ordinary skill in the art to practice the invention. Applicants respectfully submit that claims 24 and 31 fully comply with the requirements of § 112. Applicants therefore respectfully request the Examiner’s reconsideration and withdrawal of the rejections as to these claims and an indication of the allowability of same.

Rejection of Claims under 35 U.S.C. §102(a)

Claims 24-31 stand rejected under 35 U.S.C. §102(a) as being anticipated by Applicants’ Specification, Background, Page 1, Paragraph [0001] to Page 7, Paragraph [0017]. Applicants respectfully traverse this rejection.

As discussed above, independent claims 24 and 31 have been amended to include the following limitation: “processing **modified data to generate processed data** at a secondary node, wherein the secondary node comprises a replica of a first data.” Applicants respectfully submit that even if the cited sections of Applicants’ specification were prior art, a point which Applicants do not concede, the cited sections fail to disclose at least the above limitation. Since the cited reference does not disclose each limitation contained in claims 24 and 31, Applicants respectfully request withdrawal of the §102 rejection of independent claims 24 and 31 as well as dependent claims 25-30, and urge that these claims be allowed.

Rejection of Claims under 35 U.S.C. §103(a)

Claims 1-23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Applicant's admitted prior art in view of Yanai et al. (USPN 5,742,792) hereinafter referred to as ("Yanai") and further in view of Kiselev (USPN 7,149,858) hereinafter referred to as ("Kiselev"). Applicants respectfully traverse this rejection.

Applicants request removal of Kiselev as a reference under 35 U.S.C. § 103(c). Kiselev and the claimed subject matter were, at the time the invention in the application for patent was made, owned by the same entity or subject to assignment to the same entity, namely VERITAS Software Corporation, of Mountain View, California. The assignment for Kiselev is recorded at reel 014664, frame 0226, and the assignment for the present application is recorded at reel 015323, frame 0988. Copies of these assignments are enclosed. Further, Kiselev is not available as § 102(a) art since Kiselev was not known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent. Therefore, if Kiselev is prior art, a point which Applicants do not concede, it is at best §102(e) art. As §103(c) states that, "Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person." Applicants therefore respectfully request the Examiner's reconsideration and withdrawal of the rejections as to claims 1-23 and an indication of the allowability of same.

CONCLUSION

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance without any further examination and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephone interview, the Examiner is invited to telephone the undersigned at 512-439-5092.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to deposit account 502306.

Respectfully submitted,



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